

## MINUTES

### IDAHO COUNCIL ON INDIAN AFFAIRS

JANUARY 17, 2007

SENATE MAJORITY CAUCUS ROOM  
IDAHO STATEHOUSE  
BOISE, IDAHO

*(Approved by the Council)*

Council members present were Senator Michael Jorgenson, Chairman of the Council; Vice-chairman Chief Allan, Coeur d'Alene Tribal Council Chairman, representing the Coeur d'Alene Tribe; Fort Hall Business Council Vice-chairman Lee Juan Tyler, representing the Shoshone-Bannock Tribes; Rebecca Miles, Nez Perce Tribal Council Chairwoman, representing the Nez Perce Tribe; Kyle Prior, Chairman of the Shoshone-Paiute Tribal Council, representing the Shoshone-Paiute Tribes; Attorney Russell Westerberg, representing the Kootenai Tribe; Senator Edgar Malepeai; Representative Bob Nonini; Representative George Sayler; and Paula Landon, representing Governor Butch Otter. Paige Alan Parker of the Legislative Services Office was present as staff.

Also present were Representative John Rusche, representing District 7; Representative Jim Clark, representing District 3; Margaret SiJohn, Angel George, Helo Hancock, Erick Van Orden, Quanah Spencer and Gwen Lankford, representing the Coeur d'Alene Tribe; Keith Hutcheson, representing the Coeur d'Alene Tribal Police; Gary Gould, Delbert Farmer and Louise E. Dixey, representing the Shoshone-Bannock Tribes; David Kerrick, Tom Polek and Darren Williams, representing the Nez Perce Tribe; Emmett Hall, Marvin Cota and Lisa G. Jim, representing the Shoshone-Paiute Tribes; Captain Ben Wolfinger, representing the Kootenai County Sheriff's Office; Bob Wells, representing Governor Butch Otter; Mitch Silvers, representing United States Senator Mike Crapo; Bethany Gadzinski, representing the Department of Health and Welfare; Suzanne Schaefer, representing IPM & CSA; Amy Holly-Priest, representing Business Psychology Associates; Dave Goins, representing Idaho News Service; Nathaniel Hoffman, representing the Boise Weekly; Lori Edmo-Suppah, representing the Sho Ban News; Dem A. Ferguson, representing the Lewiston Tribune; and Dan Boyd, representing the Idaho State Journal.

**Chairman Jorgenson** called the meeting to order at 3:00 p.m. **Delbert Farmer** of the Shoshone-Bannock Tribes gave the invocation. **Mr. Jorgenson** introduced Governor Otter's representative **Bob Wells** and **Representative Jim Clark** to the Council.

**Representative Sayler moved and Chief Allan seconded that both the December 5, 2006, meeting of the Fuels Tax Task Force and the December 5, 2006 meeting of the Council be approved. Approval of both sets of minutes was unanimous.**

**Vice-chairman Allan** expressed his appreciation for **Chairman Jorgenson's** efforts in

promoting and supporting the creation of an Indian Coordinator position in the Department of Education.

**Mitch Silvers** of Senator Crapo's office addressed the Council on Public Law 280. As part of his presentation, **Mr. Silvers** distributed information which is available for viewing at the Legislative Services Office. According to **Mr. Silvers**, P.L. 280 was passed in 1953 and amended in 1968. The 1968 amendments made further state jurisdiction over Indian tribes subject to tribal consent and created a retrocession process. The retrocession process starts with the states and entails a rule making process between the state and the Bureau of Indian Affairs. The United States government has the authority to accept the retrocession. **Mr. Silvers** also noted that in 1994, the Idaho Supreme Court created a State/Tribal Court. In response to a question from **Representative Sayler**, **Mr. Silvers** stated that Idaho was not a "mandated" state under P.L. 280 and that both the tribes and the state had concurrent jurisdiction over the matters that Idaho, pursuant to state statute, has asserted authority.

**Chairman Jorgenson** introduced Nez Perce Tribal Police Chief **Tom Polek**, Coeur d'Alene Tribal Police Chief **Keith Hutcheson** and Kootenai Sheriff Department Captain **Ben Wolfinger** to speak on the issues of cross-deputization of tribal police officers with city police departments and county sheriff departments and of the recognition of tribal police officers as peace officers under Idaho law. **Chairman Jorgenson** noted that Kootenai County Prosecutor **Bill Douglas** had been invited to address the Council but was unable to attend. He noted that Prosecutor **Douglas** had cross-deputized the Coeur d'Alene tribal prosecutor.

Captain **Wolfinger** stated that cross-deputization works really well and puts more law enforcement feet on the street. He stated that tribal police officers may be considered peace officers only if cross-deputized. Tribal officers are allowed to attend POST and continue their education, but without cross-deputization; the tribal police officers are required to recertify every five years. Cross-deputization allows for lateral transfers between police agencies and promotes career development.

In response to a question by **Senator Malepeai**, Captain **Wolfinger** was informed that if a tribal officer is not cross-deputized, the officer only gets a POST certificate of completion. Further, the scope of cross-deputization depends on the jurisdiction which agrees to the cross-deputization. In response to **Representative Nonini**, Captain **Wolfinger** could not say whether cross-deputization is unique to the Coeur d'Alene Tribe and the Kootenai county Sheriff Department. Captain **Wolfinger** explained to **Representative Sayler** that the cross-deputization process consists of completing POST and being sworn-in.

**Chairman Jorgenson** asked about the effect of cross-deputization on tribal sovereignty. Captain **Wolfinger** explained that the county deputy sheriffs had to be cross-deputized by the tribe as well as tribal police being cross-deputized by the county. The Coeur d'Alene Tribal Council sets the parameters of the authority that cross-deputized Kootenai County deputy sheriffs may exercise on the Coeur d'Alene reservation. Cross-deputization has permitted the Kootenai Sheriff's Department to work hand-in-hand with the Coeur d'Alene Tribal Police Department on drug busts on the reservation. Captain **Wolfinger** noted that meth knows no boundaries. **Vice-chair Allan** added that meth was the motivation for the Coeur d'Alene Tribal Council to allow

cross-deputization of Kootenai County sheriff deputies. **Vice-chair Allan** added that cross-deputization with Kootenai County works and had resulted in a good relationship. Captain **Wolfinger** characterized the relationship as a partnership.

**Senator Malepeai** wondered whether the relationship was more of a collaboration rather than one involving full law enforcement responsibilities. Captain **Wolfinger** stated that the Kootenai Sheriff already had jurisdiction over non-tribal individuals located on tribal lands. Cross-deputization allows additional jurisdiction on tribal lands on specific issues. **Representative Saylor** added that cross-deputization involves a degree of jurisdiction, not blanket jurisdiction. **Vice-chair Allan** noted that cross-deputization allows help on an on-call basis.

Coeur d'Alene Tribal Police Chief **Hutcheson** told the Council that cross-deputization works out well. On the street level, law enforcement personnel do not have to clarify tribal membership, especially when dealing with the meth issue. With cross-deputization there are no boundaries.

Nez Perce Tribal Police Chief **Polek** stated that cross-deputization and peace officer certification are two separate issues. He would like to see peace officer certification of the tribal police officers after completion of POST. This would facilitate cross-deputization and increase manpower available to law enforcement agencies.

**Vice-chair Allan** recommended that the Council endorse a bill to facilitate the certification of tribal police officers. **Chairman Jorgenson** stated that it is logical that tribal police officers should be certified but that the proposal was premature since the proposed legislation had not been finalized. The proposed legislation would not mandate cross-deputization, but would make it an option.

Nez Perce Chairwoman **Miles** commented that certification of tribal officers would help combat the rise in meth, especially since many areas in Idaho are remote and the tribal police officers are well trained. With county budgets going down, cross-deputization would help with the manpower issue. **Chairman Jorgenson** responded that the prerequisite is graduation from POST so that the tribal officers can become familiar with state law and learn a common strategic approach.

Shoshone-Paiute Chairman **Prior** stated that in Duck Valley, law enforcement is managed by the Bureau of Indian Affairs and that changing Idaho law would not directly affect the Shoshone-Paiute Tribes. He noted that the Bureau of Land Management only has one police officer for all of Owyhee County.

**Senator Malepeai** commented that even with POST training there still may be barriers with regard to cultural issues and asked whether POST conducted cultural training. Nez Perce Tribal Police Chief **Polek** responded that neither POST nor the corrections training addressed cultural issues. Captain **Wolfinger** was not aware of any cultural training but noted that the tribal police officers attend POST already. **Louise Dixey**, manager of the Shoshone-Bannock Tribes' casino and former chief judge of the tribal court, stated that the Shoshone-Bannock Tribes have a Memorandum of Understanding with Bingham and Bannock counties on drug issues and has a

good working relationship with those counties. However, the Idaho State Police has not entered into the MOU. She noted that the Shoshone-Bannock police officers are federally trained and certified.

**Bethany Gadzinski**, the substance abuse program manager for the Department of Health and Welfare addressed the Council on the Access to Recovery (ATR) program. The ATR program is funded by a federal grant that expires in August of 2007. Idaho Native Americans are one of the population groups served by the ATR program. Information distributed by **Ms. Gadzinski** showed that the Idaho ATR program had served 1,081 Native Americans. Prior to the ATR program, Native Americans only received treatment from the state off reservation. The Department of Health and Welfare has targeted the use of eighteen percent (18%) of the ATR funds on Native Americans.

**Ms. Gadzinski** explained that under the ATR program, the Department has entered into reciprocity agreements with the tribes on the use of treatment facilities. Once a tribal facility is certified by the Department, there is no need to recertify. Once the ATR grant expires, the Department intends to continue the MOU with the tribes on the certification of facilities. However, after the ATR grant expires, the tribal members seeking state substance abuse assistance will have to provide the full scope of information. **Ms. Gadzinski** believes that the tribes would like to continue receiving state substance abuse services after the ATR grant expires.

In response to a question from **Chairman Jorgenson**, **Ms. Gadzinski** stated that after an initial rocky start regarding the billing process, the overall experience with the tribes has been positive. Nez Perce Tribal Chairwoman **Miles** commented that the Nez Perce Tribe has benefitted from the ATR program, but noted that the data supplied by **Ms. Gadzinski** indicated a decrease in Native American participation in the ATR program. **Ms. Gadzinski** responded that she did not know why there had been a decrease and suggested that there may be a need to market the program to Native Americans.

Shoshone-Paiute Tribal Chairman **Prior** stated that the tribes were surprised that the Native American Subcommittee had been disbanded. **Ms. Gadzinski** responded that former **Governor Risch** had moved those issues to an interagency committee, but agreed that there was a problem in determining how to incorporate Native Americans into the interagency committee.

In response to a question from **Representative Nonini**, **Ms. Gadzinski** stated that the ATR program was fully federally funded and had doubled the treatment capacity of the Department. The Department may have approximately two million dollars of the ATR program funds to carry over into a fourth year. **Vice-chair Allan** stated that the Benewah Medical Center and Coeur d'Alene Wellness Center serves both Indians and non-Indians on a 50-50 basis and does not want to turn non-Indians away. **Ms. Gadzinski** stated that the Department would like to keep the substance abuse program at the Tribe's treatment facility funded at the current level.

The Governor's representative **Landon** asked whether there might be more federal funding of these programs in the future. **Ms. Gadzinski** responded that the ATR grant program had been an initiative of **President Bush**. Given Idaho's excellent track record, Idaho would be able to compete with the other states if additional funds were made available. Federal substance abuse

funding may go into a block grant but, if it did so, the distribution of funds would be population based. Following up on a question from Shoshone-Paiute Chairman Prior, Ms Gadzinski state that Idaho has been a shining star in the ATR program. Idaho is the only state to use the ATR funds statewide and to fully include the tribes. The Idaho outcomes have been good and there is no reason to discontinue funding the Idaho ATR program.

Coeur d'Alene Tribal Attorney **Quannah Spencer** commented that the Benewah Medical Center and Coeur d'Alene Tribal Wellness Center is the only certified health care facility in its immediate area. That center, which includes substance abuse recovery programs, serves Indians and non-Indians on a sliding fee basis. If the patients have financial problems, the tribe tries to find a way to pay the remainder. **Mr. Spencer** requested that the Council encourage the Legislature and the Governor to present a united front to the Congress in support of continuing the ATR program.

**Chairman Jorgenson** asked the Council member if there were current legislation of interest to the Council, reminding the members that the Council can only make recommendations to the Legislature. **Representative Nonini** stated that so far everything on the House side has been positive. **Representative Saylor** stated that the same was true for the House Democrats. **Senator Malepeai** stated that he had not heard of any issues that may affect the tribes in the Senate.

**Vice-chair Allan** asked whether the Council could pass a resolution to encourage **Governor Otter** to move forward on the fuels tax agreements with the separate tribes. **Chairman Jorgenson** stated that it might help to remind the Governor that the tribes are serious in getting these issues resolved. **Representative Saylor** agreed. Fort Hall Business Council Vice-Chair **Tyler** expressed support for **Vice-chair Allan's** proposal, commenting that one government cannot tax another government.

**Nez Perce Tribal Chairwoman Miles** moved the Council send a letter to **Governor Otter** indicating the willingness of each of the individual tribes to move expeditiously toward separate agreements on the fuels tax issues. **Representative Saylor** seconded the motion. The motion passed unanimously.

**Chairman Jorgenson** announced that immediately after the Council meeting adjourned, there would be a visit to the old Ada County Courthouse to view the murals that depict Indians. He noted that the murals are not of good quality or historically correct and that the first man hung in Idaho was a white man who had been convicted of murdering an Indian. **Chairman Jorgenson** stated that legislative leadership has asked the Council to make a recommendation as to what might be done with these murals.

Fort Hall Business Council Vice-chair **Tyler** stated that the murals may be useful in educating the youth and in promoting peace and healing. He suggested that they be placed in a historical archive so that the wrongs of the past are not repeated. **Ms. Dixey** of the Shoshone-

Bannock Tribes stated that her family is directly descended from the Boise Valley people and that the factual depictions of the forceful removal of the Shoshone-Bannock and the Shoshone-Paiute peoples from the Boise Valley should be preserved and placed in a cultural setting in Boise with other preserved tribal items for their historical value. **Ms. Dixey** noted that Idaho has a Hispanic Cultural Center and a Black History Museum, but not an Indian center. Shoshone-Paiute Tribal Chairman **Prior** concurred with **Mr. Tyler** and **Ms. Dixey**, noting that people need access to their stories.

Nez Perce Tribal Chairwoman **Miles** stated that she wanted to see the paintings. She would not mind seeing the paintings preserved and archived, but wondered what purpose would be served. **Vice-chair Allan** stated that the question is: “What’s the right thing to do? If the paintings are offensive, they should be taken down; if they cannot be taken down, explanatory plaques should be placed next to them.”

**Mr. Westerberg** stated that he could not speak for the Kootenai Tribe and apologized for the inability of Kootenai Tribal Council Chairwoman **Jennifer Porter’s** inability to attend the Council meeting due to the untimely death of Richard Abraham. **Chairman Jorgenson** expressed the Council’s condolences.

**Representative Sayler** stated that the issue should be what is best to accurately preserve history, not whether the murals are good or bad. He suggested that the tribes should decide what to do with them. **Chairman Jorgenson** closed the discussion by stating that the Legislature is trying to do the right thing by offering input to the Council.

**Chairman Jorgenson** stated that the next Council meeting has not, as yet, been scheduled. He expressed the opinion that the legislative session needs to advance before a meeting may be scheduled.

The meeting adjourned at 4:35 p.m.